UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SIALEI SEIULI, Plaintiff, v. MICHAEL J. ASTRUE, Commissioner of the Social Security Administration, Defendant.	Case No. ED CV 08-1700-PJW MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying her applications for Disability Insurance benefits ("DIB") and Supplemental Security Income ("SSI"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he: 1) failed to consider a treating doctor's statement that she needed a disabled placard for her car; 2) found that her hypertension was controlled with medication; 3) failed to consider the dosage of her prescribed medication; and 4) failed to properly consider whether she met or equaled Listing 1.02. (Joint Stip. at 3-4, 7-8, 9-10, 11-15.)

Because the Agency's decision that Plaintiff was not disabled is supported by substantial evidence, it is affirmed.

II. SUMMARY OF PROCEEDINGS

Plaintiff applied for DIB and SSI on April 7, 2006, alleging that she had been unable to work since November 30, 2005, because of arthritis in her knees and ankle, and a left ankle fracture that she suffered in a fall in October 2005. (Administrative Record ("AR") 39, 97.) The Agency denied the application initially and on reconsideration. (AR 35-42, 47-52.) Plaintiff then requested and was granted a hearing before an ALJ. (AR 54, 62-66.) Plaintiff appeared with counsel and testified at the hearing on February 5, 2008. (AR 15-34.) On March 4, 2008, the ALJ issued a decision denying benefits. (AR 8-14.) Plaintiff appealed to the Appeals Council, which denied review. (AR 1-4.) Plaintiff then commenced the instant action.

III. DISCUSSION

1. The Treating Doctor's Opinion

In her first claim of error, Plaintiff contends that the ALJ erred in failing to properly consider a May 24, 2006 chart note by her treating doctor Edward Keiderling. In the note, Dr. Keiderling reported that he had filled out a form for Plaintiff to obtain a temporary disability placard from DMV, and that he intended to fill out a disability form to place Plaintiff on disability for four months. (AR 208.) Plaintiff argues that, though the ALJ referred to this statement in his decision, he did not explain whether he accepted or rejected this "opinion" that she was disabled. (Joint Stip. at 3-4.) For the following reasons, the Court finds that this claim does not warrant remand or reversal.

Dr. Keiderling's chart note from May 2006 was almost two years old when the ALJ decided in March 2008 that Plaintiff was not disabled. Accepting as true Dr. Keiderling's "opinion" that Plaintiff was disabled and needed a DMV placard for four months (i.e., until September 2006), it would still not have affected the ALJ's conclusion that Plaintiff was not disabled in March 2008.

Furthermore, though, in general, a treating doctor's opinion is entitled to deference, *see Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007), a treating doctor's opinion regarding the ultimate issue of disability is not entitled to any special weight. *Batson v. Comm'r of Soc. Sec.*, 359 F.3d 1190, 1195 (9th Cir. 2004) ("[A] treating physician's opinion is . . . not binding on an ALJ with respect to the . . . ultimate determination of disability."); 20 C.F.R. § 404.1527(e)(3); *see also* Social Security Ruling ("SSR") 96-5p (stating that opinion that claimant is disabled, "even when offered by a treating source, can never be entitled to controlling weight or given special significance"). This is particularly true where, as here, the doctor's opinion was based in large measure on Plaintiff's reports to him of her subjective complaints and the ALJ found that she was not credible. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) ("An ALJ may reject a treating physician's opinion if it is based to a large extent on a claimant's self-reports that have been properly discounted as incredible.") (quotation omitted).

Assuming Plaintiff is right and Dr. Keiderling's May 2006 chart note constitutes an opinion that Plaintiff was disabled, that opinion is not entitled to any weight and, therefore, any error on the ALJ's part in failing to discuss it further was harmless. *See Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006)

(holding error harmless where it is "inconsequential to the ultimate nondisability determination.").

In light of the ALJ's discussion of the record, Plaintiff's claim that the ALJ was obligated to state whether he accepted or rejected Dr. Keiderling's May 24, 2006 opinion is meritless. In determining that Plaintiff's osteoarthritis and obesity constituted severe impairments (AR 10), the ALJ evidently accepted the treating doctor's diagnosis. As for Plaintiff's subjective complaints noted by Dr. Keiderling, the ALJ found that Plaintiff was not credible. (AR 11-12.) And Plaintiff has not challenged the credibility finding. Thus, the doctor's opinion, which is based in large measure on Plaintiff's statements, is not entitled to great weight. *See Tommasetti*, 533 F.3d at 1041.

Because the ALJ adequately addressed the medical evidence and supported his conclusions, he did not err by failing to specifically discuss the fact that Dr. Keiderling helped Plaintiff obtain a disabled placard from DMV or that he put her on disability for four months. Thus, this claim does not warrant remand or reversal.

2. Plaintiff's Hypertension

In her second claim of error, Plaintiff contends that the ALJ misrepresented the record regarding her hypertension so that he could ultimately conclude that it did not cause her significant problems. Plaintiff argues that the record actually shows that her blood pressure was very high but that the ALJ relied on an a random normal reading to support his finding that it was under control. (Joint Stip. at 7-8.) For the following reasons, the Court disagrees.

The ALJ found that Plaintiff's hypertension was controlled by medication and that it had not caused significant problems for

Plaintiff. (AR 12.) In support of this finding, he referenced a chart note from December 2007 in which Plaintiff's blood pressure was recorded at 132/90. (AR 12, 222.) As Plaintiff points out, however, her blood pressure was recorded at 140/80 three days later. (AR 221.) And a fair reading of the record demonstrates that it had regularly been measured as relatively high throughout the period in issue. (AR 226, 228, 229, 235.) The ALJ should have discussed the other readings, showing that Plaintiff's blood pressure was high, as well as the one showing that it was low, and explained how his conclusion that Plaintiff's blood pressure was under control was supported by the evidence. *See Gallant v. Heckler*, 753 F.2d 1450, 1455-56 (9th Cir. 1984) (holding ALJ cannot selectively parse record and focus only on evidence that supports his conclusion).

Here again, however, though Plaintiff has pointed out that the ALJ erred, she has not shown that that error calls into question the ALJ's ultimate conclusion that Plaintiff was not disabled. Plaintiff has not shown that the ALJ's other finding--that there was no indication that Plaintiff's high blood pressure had caused her significant problems--was erroneous. Nor has she attempted to show how her high blood pressure prevented her from working. Instead, she argues that, because high blood pressure carries a greater risk of heart disease *in general*, the ALJ's decision must be reversed. (Joint Stip. at 7-8.) This argument is rejected. Though Plaintiff may have a greater than normal risk of developing heart disease as a result of her high blood pressure--something that the record in this case does not establish--she has not shown that such risk limits her ability to work. Because Plaintiff had the burden of proving that her condition is disabling, *see Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.

1999) (noting that the burden of proof is on the claimant as to steps one to four of the five-step sequential analysis), the ALJ's finding that her hypertension was controlled with medication, assuming there was error, does not require reversal.

3. Plaintiff's Prescribed Medications

In her third claim of error, Plaintiff contends that the ALJ erred when he failed to consider the dosage of her prescription medication. Plaintiff cites one clinic note, dated December 12, 2007, which refers to a prescription for Vicodin that reads: "r.f. Vicodin 5/500 poQn-BID 45 prn." (Joint Stip. at 9; AR 221.) Plaintiff does not explain how this notation supports her argument. Instead, she argues that SSR 96-7p specifically requires an ALJ to consider a claimant's prescription medication dosage, and that the ALJ's failure to do so in this case requires reversal. (Joint Stip. at 9-10.) Plaintiff also appears to argue that the ALJ improperly disregarded her testimony regarding the side effects of her medication. (Joint Stip. at 10.) For the following reasons, the Court disagrees.

Plaintiff has not shown that the ALJ failed to consider her medication dosage. In his decision, the ALJ noted that Plaintiff took pain medications, including Tylenol, Vicodin, Motrin, and Ultram. (AR 12, 13.) Plaintiff did not testify that these medications caused her side effects. In several reports that she submitted, she reported that pain killers sometimes made her feel dizzy. (AR 112, 121, 132.) At the hearing, however, she testified that the only thing that kept her from working was the pain and swelling in her feet. (AR 23.) She then testified that she took medications to manage her pain, including Vicodin, which sometimes worked, and sometimes did not. (AR 24.) She did not mention any side effects, however. Given the dearth of

evidence in the record regarding side effects and her failure to raise the issue at the hearing, the ALJ did not err in failing to further address this issue in his decision.

Finally, even if Plaintiff had testified that her medications were causing side effects that interfered with her ability to work, the ALJ would have been justified in rejecting that testimony because there was no objective medical evidence supporting the claimed side effects and the ALJ found that Plaintiff was not credible, a finding Plaintiff has not challenged here. *See Thomas v. Barnhart*, 278 F.3d 947, 960 (9th Cir. 2002) (affirming ALJ's exclusion of claimant's side effects testimony where the ALJ properly found her testimony was generally not credible). For these reasons, this claim is rejected.

4. Listing 1.02

In her fourth claim of error, Plaintiff contends that the ALJ erred by failing to adequately consider whether her combination of impairments met or equaled Listing 1.02. She argues that the medical record shows that she is unable to ambulate effectively on a sustained basis, as required by Listing 1.02(A), and that other objective medical findings in the record show that she meets or medically equals the Listing. (Joint Stip. at 11-15.) The Court disagrees, for the following reasons.

Listing 1.02, "Major dysfunction of a joint(s) (due to any cause)," reads, in relevant part, as follows:

> Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) *and* chronic joint pain *and* stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), *and* findings on appropriate medically

> acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). *With*:
>
> A. Involvement of one major peripheral weight-bearing joint (i.e. hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b[.][1]

20 C.F.R. § 404, Subpart P, App. 1, Listing 1.02A (emphases added).

The ALJ did not specifically discuss Listing 1.02 in his decision. He found only that Plaintiff did not have an "impairment or combination of impairments that meets or medically equals one of the listed impairments[.]" (AR 10.) In making this finding, the ALJ evidently relied on the opinions of the examining orthopedist, who determined that Plaintiff did not have any significant physical impairments or functional limitations, and of the reviewing state agency physicians, who concluded that she could do light work, as set forth above. (AR 12, 13, 184, 213-17.) Because these opinions are not contradicted by any evidence in the record, except perhaps for the

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[1] 1.00B2b(2) provides, in relevant part:

> To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living . . .. [E]xamples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

20 C.F.R. § 404, Subpart P, App. 1, Listing 1.00(B)(2)(b)(2).

treating doctor's opinion that Plaintiff was disabled for four months in 2006, they constitute substantial evidence to support the ALJ's decision. *See, e.g., Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (holding that opinion of nontreating source that is based on independent clinical findings may constitute substantial evidence to support ALJ's decision).

In any event, Plaintiff has failed to establish that she meets or equals the requirements of Listing 1.02. As set forth above, the Listing requires, among other things, that the claimant be unable to ambulate effectively. An inability to ambulate effectively, as defined in the regulations, means "the inability to walk without the use of a walker, two crutches or two canes . . . [or] the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail." 20 C.F.R. § 404, Subpart P, App. 1, Listing 1.00(B)(2)(b)(2). Plaintiff has not shown that she meets this standard.

Plaintiff testified that she uses a cane only twice a week and only when she goes out, if the pain and swelling is "real bad[.]" (AR 25.) She also testified that she could walk to her car, drive without difficulty, and "get a little bit of grocer[ies]." (AR 28.) Her abilities, as she herself described them, contradict her claim that she is unable to ambulate effectively. Because Plaintiff did not meet her burden of demonstrating that her condition met or equaled Listing 1.02, this claim does not require remand or reversal.

IV. CONCLUSION

For the foregoing reasons, the Agency's decision is affirmed and the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: April 26, 2010.

PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

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